

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

GERALD ROBINSON,

Petitioner,

v.

SHERRI DUFFEY,

Respondent.

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CASE NO. 3:14-CV-1012

OPINION & ORDER

[Resolving Docs. [8](#), [9](#), & [10](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On May 8, 2014, Petitioner Gerald Robinson filed a petition for a writ of habeas corpus under 28 U.S. C. § 2254.^{1/} On June 20, 2014, after he suffered a heart attack, Petitioner Robinson filed a motion for equitable relief requesting that he be released to the care of his brother and sister-in-law during his final days.^{2/} He is expected to die in 30 to 60 days.^{3/} He is currently serving a sentence of 15 years to life for the 1980 murder of Sister Margaret Ann Pahl. For the following reasons, the Court **DENIES** Petitioner's motion for equitable relief.

The Court concludes that it does not have jurisdiction to grant the requested relief. "There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence."^{4/} Further, "neither § 2241 nor § 2254 vest this Court with habeas corpus jurisdiction to order a compassionate release."^{5/} Under state law, Ohio Revised Code § 2967.05(B) "vests only Ohio's governor—not this Court—with discretion to

^{1/}Doc. [1](#).

^{2/}Doc. [10](#).

^{3/}*Id.*

^{4/}[Greenholtz v. Inmates of Nebraska Penal and Correctional Complex](#), 442 U.S. 1, 7 (1979).

^{5/}[Fox v. Warden Ross Correctional Inst.](#), No. 2:12-cv-476, 2012 WL 3878143, at *2 (S.D. Ohio Sept. 6, 2012), *adopted*, 2012 WL 5198362 (S.D. Ohio Oct. 19, 2012); *see also* [Tucker v. Dep't of Corr.](#), 2:13-CV-0293 GGH P, 2013 WL 1091282 (E.D. Cal. Mar. 15, 2013).

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order an inmate's release" on compassionate grounds.^{6/} The statute says "'[u]pon the recommendation of the director of rehabilitation and correction, accompanied by a certificate of the attending physician that an inmate is terminally ill, . . . the governor may order the inmate's release.'" ^{7/} Thus, the governor, not the courts, can grant compassionate release for state prisoners. However, Petitioner Robinson may not be eligible under this statute because it excludes prisoners serving time for murder.^{8/}

Further, Petitioner Robinson is ineligible for relief under the comparable federal statute. Under 18 U.S.C. § 3582(c)(1) (A)(i), the Director of the Bureau of Prisons has discretion to file a motion for compassionate release with the district court.^{9/} Courts cannot *sua sponte* grant compassionate release.^{10/}

Additionally, "neither § 2241 nor § 2254 empower[s] this Court with habeas corpus jurisdiction to review any denial of a compassionate release request under Ohio Revised Code § 2967.05."^{11/} Since the language of the Ohio statute is permissive, not mandatory, it fails to create a liberty interest in compassionate release and any denial of a compassionate release request is therefore unreviewable.^{12/}

^{6/}[Fox, 2012 WL 3878143, at *2.](#)

^{7/}[Ohio Rev. Code § 2967.05\(B\).](#)

^{8/}*Id.* at §2967.05(C).

^{9/}[18 U.S.C. § 3582\(c\)\(1\) \(A\)\(I\).](#); *see also Engle v. United States*, 26 F. App'x 394, 397 (6th Cir. 2001) ("[D]istrict court[s] lack[] jurisdiction to sua sponte grant compassionate release. A district court may not modify a defendant's federal sentence based on the defendant's ill health, except upon a motion from the Director of the Bureau of Prisons.").

^{10/}*Id.*

^{11/}[Fox, 2012 WL 3878143, at *2.](#)

^{12/}*Id.*

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For the foregoing reasons, the Court **DENIES** Petitioner's motion for equitable relief.

IT IS SO ORDERED

Dated: July 3, 2014

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE